

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR08-64

JAMES OLIVER DELAMAR,
APPELLANT

V.

STATE OF ARKANSAS,
APPELLEE

Opinion Delivered 24 SEPTEMBER 2008

APPEAL FROM THE CLARK
COUNTY CIRCUIT COURT,
[NO. CR-07-35]THE HONORABLE JOHN
ALEXANDER THOMAS, JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

A Clark County jury convicted James Delamar of the first-degree domestic battery, aggravated robbery, and first-degree stalking of Regina Parham. On appeal, he challenges the sufficiency of the evidence supporting all three convictions, the circuit court's failure to hold a hearing on his request for a new lawyer, and the court's refusal to give a jury instruction after the State's closing argument. We recently affirmed Delamar's conviction for second-degree domestic battery of Parham on another occasion. *Delamar v. State*, 101 Ark. App. 313, ___ S.W.3d ___ (2008).

We address Delamar's sufficiency challenges first. *Standridge v. State*, 357 Ark. 105, 112, 161 S.W.3d 815, 818 (2004). As to the domestic-battery conviction, Delamar argues only that the State failed to prove that he and Parham were household

or family members—a requirement for first-degree domestic battery. Ark. Code Ann. § 5-26-303 (Supp. 2007). Parham testified that Delamar had lived with her at some point. Her testimony satisfies the statute’s family-or-household-member requirement. Ark. Code Ann. § 5-26-302(2)(F) (Repl. 2006). Any inconsistencies in her testimony were for the jury, not this court, to resolve. *Mitchem v. State*, 96 Ark. App. 78, 82–83, 238 S.W.3d 623, 626 (2006). Substantial evidence therefore supports Delamar’s domestic-battery conviction. *Ibid.*

Delamar also challenges the sufficiency of the evidence supporting his robbery and stalking convictions. He does so only by attacking Parham’s credibility. We defer to the jury’s determination of all the witnesses’ credibility. *Mitchem*, 96 Ark. App. at 82, 238 S.W.3d at 626. Thus substantial evidence also supports Delamar’s robbery and stalking convictions. *Ibid.*

Delamar next argues that the circuit court erred by not holding a hearing on his request for a different lawyer. We disagree. Delamar wrote a letter to the circuit judge about two months before trial asking for new appointed counsel. He never sought a hearing on his request. Before his trial, Delamar appeared in front of the circuit court at least once after he wrote the letter. During that appearance he never mentioned his new-lawyer request to the court. Nor did he raise the issue at his trial. We therefore see no abuse of discretion in the trial court’s failure to hold a hearing on Delamar’s request for a different lawyer.

Last, Delamar argues that the circuit court abused its discretion by refusing a jury instruction he proposed in response to the prosecutor’s closing argument. The prosecutor emphasized some of the testimony of Natasha Williams—the stranger who stopped to help Parham after Delamar had stabbed her. Williams testified that Parham identified Delamar as her attacker. Delamar did not object to this testimony. In his closing, the prosecutor described this as “excited utterance” testimony, whose “truth” the law recognizes. Delamar then asked the circuit court to instruct the jury that no piece of evidence is entitled to any more weight than any other. Delamar did not offer an AMCI, or any proposed instruction, on this issue. The court refused to give any more instructions.

We see no abuse of discretion. The court had already instructed the jury with AMCI 2d 104: “You are the sole judges of the weight of the evidence and the credibility of the witnesses.” Having presided over the trial, and heard the entire closing argument, the circuit court was best situated to make the judgment call on whether this point deserved a supplemental non-AMCI instruction. *Jones v. State*, 336 Ark. 191, 205–06, 984 S.W.2d 432, 439 (1999).

Affirmed.

PITTMAN, C.J., and HEFFLEY, J., agree.